

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
FAFARD REAL ESTATE &  
DEVELOPMENT CORP.,

Plaintiff

v.

\_\_\_\_\_  
METRO-BOSTON BROADCASTING,  
INC.,

Defendant  
\_\_\_\_\_

Civil Action No. 04-11531 RGS

DEFENDANT'S ASSENTED-TO MOTION  
FOR LEAVE TO FILE REPLY MEMORANDUM

Pursuant to Local Rule 7.1(B)(3), defendant moves for leave to file, on or before August 3, 2004, a reply memorandum in support of its special motion to dismiss, limited to responding to plaintiff's argument that the federal court cannot decide defendant's special motion to dismiss under Erie R. Co. v. Tompkins, 304 U.S. 64 (1938).

As grounds for this motion, defendant says:

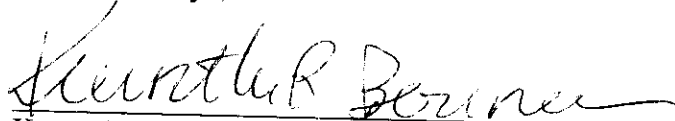
1. In plaintiff's opposition to the special motion to dismiss, plaintiff argues that Erie prevents the federal court from considering the special motion to dismiss.
2. Plaintiff's legal research discloses a number of cases bearing on this issue supporting defendant's position that the federal court must treat the special motion to dismiss no differently from how such a motion would be treated in state court.
3. Defendant has not yet had the opportunity to brief this issue, as it was raised for the first time in plaintiff's opposition memorandum, served on July 20, 2004. Defendant believes that a brief on this issue from defendant would be of great assistance to the Court.

Further, because plaintiff has raised the issue for the first time in an opposition brief, in fairness defendant should be given a chance to file a written response.

4. Plaintiff's counsel has advised defendant's counsel that plaintiff assents to the allowance of this motion.

METRO-BOSTON BROADCASTING, INC.

By its attorneys,



Kenneth R. Berman (BBO #040320)

Nutter McClennen & Fish LLP

World Trade Center West

155 Seaport Boulevard

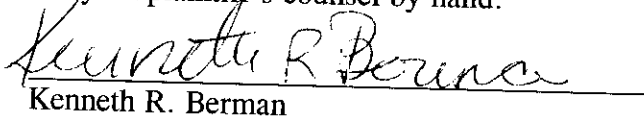
Boston, Massachusetts 02210

(617) 439-2000

July 26, 2004

Certificate Of Service

I certify that I served this document today on plaintiff's counsel by hand.



Kenneth R. Berman

July 26, 2004

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